Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 490 of 2001

(Old No. 1856 of 1990)

(1) Puran Singh s/o Shiv Singh,
Village Pudiyani Patwari Circle Kola Pani,
Tehsil Karan Prayag, District Chamoli.
(2) Anand Singh S/o Madan Singh,
Village Jhur Kandeay Patwari Circle
Banauli, Tehsil Karan Prayag, District
Chamoli.

……..Appellants

Versus

State

…….. Respondent

Sri R.P. Nautiyal, learned counsel for the appellants.
Sri G.S. Sandhu, learned Government Advocate for the State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

[Per Prafulla C. Pant, J.]

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 7.9.1990, passed by learned Sessions Judge, Chamoli, in Sessions Trial No. 10 of 1989, whereby appellants Puran Singh and

Anand Singh are convicted under Sections 376, 302/34 and 201 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and each one of the convict is sentenced, under Section 376 of I.P.C. to rigorous imprisonment for a period of ten years, under Section 302/34 of I.P.C. to imprisonment for life, and under Section 201 of I.P.C. to rigorous imprisonment for a period of five years.

(2) Heard learned counsel for the parties and perused the entire record.

(3) Prosecution story in brief is that on 20.3.1988, P.W. 1 Madho Singh gave a report (Ext. A-1) to Patwari of Banauli, wherein it was mentioned that on 13.3.1988 Smt. Purni Devi (deceased) had gone to forest, in village Conoth, to collect firewood, but did not return back. (In Uttarakhand hills, in the interior areas, Revenue Officials are given police powers). It was also mentioned in the said report that on 14.3.1988, villagers made search for Purni Devi, but she could not be traced. However, on 20.3.1988 at about 6.30 P.M., P.W.2 Jagat Singh told Madho Singh (informant) that Puran Singh (accused-appellant had told him that in the jungle, from an oak tree, a woman's body is lying hanging. On the said report (Ext.A-1), the Patwari proceeded the next day towards the jungle of Pudiyani and took the dead body of Purni Devi in his possession and prepared inquest report (Ext. A-3), sample seal (Ext. A-9 and Ext. A-10) and letter to Chief Medical Officer, Chamoli (Ext. A-8), requesting for post mortem examination of the dead body. The autopsy was concocted on 22.3.1988 at about 11.50 A.M. at Gopeshwar,

on the dead body by a team of two doctors, which included Dr. N.S. Pal (P.W. 5). The doctors, who conducted post mortem examination prepared report (Ext. A-2), in which they opined that cause of death was asphyxia as a result of strangulation.

(4) On 21.6.1988 witness, Munni Devi (P.W. 3), who accompanied deceased Purni Devi on 13.3.1988, while going to forest, was examined under Section 164 of Cr.P.C. by the Sub Divisional Magistrate Karan Prayag (District Chamoli). Narrating the story, Munni Devi told the Magistrate that on 13.3.1988, she along with Purni Devi (deceased), Saraswati Devi (PW. 4), one Sita and others had gone to Pudiyani forest for collecting firewood. When they were returning with the bundles of firewood, Puran Singh, Chaukidar of the forest (accused-appellant), stopped them and snatched their sickles for entering in the Pudiyani jungle. On this, the ladies consulted among themselves and Saraswati Devi and Purani Devi decided to go to the house of Puran Singh to get back their sickles. However, Puran Singh did not return their sickles and they came back empty handed. Thereafter, Saraswati Devi and Sita went back to village to their houses, but Purni Devi expressed fear of being scolded by her in-laws for coming without sickle. On this, Purni Devi (deceased) and Munni Devi, (P.W. 3) decided to go to Village Chatauli to the house of sister of Purni Devi. On the way, they met Anand Singh, accused-appellant, who assured them that he would get the sickles back from Puran Singh. Meanwhile, Puran Singh also reached there and the two accused took the two ladies to

nearby cowshed of Anand Singh. There, Puran Singh committed rape on Purni Devi and Anand Singh committed rape on Munni Devi, after making the two ladies drunk with liquor. Next day morning Munni Devi came back from the cowshed, but Purni Devi remained there. According to Munni Devi, she was threatened by the accused not to tell about the incident to anyone.

(5) It appears that as per the orders of Nayab Tehsildar the investigation was entrusted on 25.3.1988 to Supervisory Kanoongo. P.W. 7 Madho Singh, the then Supervisory Kanoongo, on the basis of the report of post mortem examination, registered a case crime relating to offence punishable under Section 302 for I.P.C., and started investigation. He interrogated the witnesses and prepared the site plans (Ext. A-4, Ext. A-5 and Ext. A-6). However, finally further investigation was entrusted to regular police and P.W. 8 Virad Sharma, Station Officer of Police Station Gopeshwar, completed the investigation and after further interrogation of the witnesses, submitted the charge sheet (Ext. A-19) against accused Puran Singh and Anand Singh, both the appellants, for their trial in respect of the offences allegedly committed by them punishable under Section 302, 376, 342, 346, 343, 323, 504 and 506 of I.P.C.

(6) On receipt of the charge sheet, it appears that the Magistrate, after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case to the Court of Sessions Judge, Chamoli, for trial. Learned Sessions Judge, after hearing the prosecution and the

defence, framed charge of offences, punishable under Sections 376, 302 read with Section 34, and 201 of I.P.C., on 14.9.1989 against both the accused Puran Singh and Anand Singh. They pleaded not guilty and claimed to be tried. On this, on behalf of the prosecution, P.W. 3 Munni Devi was examined on 29.11.1989. In her examination-in-chief, she named four more persons namely, Harmal Singh, Tham Singh, Chunya Singh and Bachan Singh, alleging that they too committed rape on Purni Devi. Learned Sessions Judge, exercising its powers under Section 319 of Cr.P.C., summoned that four and framed charge of offences punishable under Sections 376, 302 read with Section 34, and 201 of I.P.C. against all the six accused on 16.2.1990. The six, namely, Puran Singh, Anand Singh, Harmal Singh, Tham Singh, Chunya Singh and Bachan Singh were further charged of offence punishable under Section 147 of I.P.C. All the six pleaded not guilty and claimed to be tried. The prosecution evidence thereafter, adduced afresh. On behalf of the prosecution P.W. 1 Madho Singh, informant, P.W. 2 Jagat Singh S/o Man Singh, P.W. 3 Munni Devi, P.W. 4 Saraswati Devi, P.W. 5 Dr. N.S. Pal, P.W. 6 Shivraj Singh, P.W. 7 Madho Singh, the then Supervisory Kanoongo and P.W. 8 Virad Sharma, Station Officer Police Station Gopeshwar were examined. The oral and documentary evidence adduced by the prosecution was put to the accused persons in reply to which they alleged the same to be false. On behalf of the defence D.W. 1, Jagat Singh S/o Kalyan Singh, D.W. 2 Murkhulaya Singh and D.W. 3 Nanda Singh were got examined. After hearing the parties, the trial court did not find accused Harmal Singh, Tham Singh, Chunya

Singh and Bachan Singh guilty of any of the charges framed against them and they were acquitted of the charges. As to the accused Puran Singh and Anand Singh, the trail court did not find them guilty of offence punishable under Section 147 of I.P.C., but they were found guilty of offences punishable under Sections 376, 302/34 and 201 of I.P.C.. The two convicts (present appellants) were heard on sentence and the trial court sentenced each of the, namely, Puran Singh and Anand Singh, under Section 376 of I.P.C. to rigorous imprisonment for ten years, under Section 302/34 of I.P.C. to imprisonment for life, and under Section 201 of I.P.C. to rigorous imprisonment for a period of five years. The convicts preferred appeal before the Allahabad High Court, from where this appeal has been received by transfer to this Court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

(7) Before further discussions, it is pertinent to mention here the ante mortem injuries found on the dead body of the Purni Devi (deceased), which are recorded in Ext. A-2 by P.W. 5 Dr. N.S. Pal. The same are being reproduced below:-

(i) *Abrasion 1cm x .3cm at right thigh, 7 cm above the right knee joint.*

(ii) *Abrasion 1 cm x 2cm at the side of left thigh near vagina.*

(iii) *Abrasion 2cm x .5 cm on the outer aspect of leg 5cm below the left knee joint.*

(iv) *Ligature mark. Red and congested. Size 32 cm x 2 cm circular around the neck above the thyroid*

cartilage the larynx and chin. eckimoses present. Knot present.

(v) *Ligature mark between the nose and upper lip circular on both cheeks size 42 cm x 1 cm below both ear. On dissection, no echhimoses present. On dissection thyroid cartilage fractured.*

The Doctors opined that the cause of death was asphyxia as a result of strangulation.

(8) The First Information Report in this case is delayed by more than six days. Neither from the side of in-laws nor form the side of parents of Purni Devi (deceased), thought it proper to make a report to the Patwari of the circle that Purni Devi is missing since 13.3.1988. From the First Information Report (Ext. A-1), which was lodged by P.W. 1 Madho Singh, it appears that it was Puran Singh (accused-appellant), who informed P.W. 2 Jagat Singh that dead body of a woman is hanging from a tree in Pudiyani forest. Munni Devi (P.W. 3), who is said to be the witness of commission of crime remained silent and did not disclose anything to anyone for a week As mentioned in post mortem examination, the dead body was found 5-6 days old.

(9) P.W. 3 Munni Devi is the star witness of this case, examined on behalf of the prosecution. She states before the trial court that on the day of incident she had gone with Purni Devi (deceased), Saraswati Devi (P.W. 4), one Sita Devi and others for collecting the grass and firewood from the jungle. She states that when they were taking the

bundles for firewood, Puran Singh (accused-appellant), Chaukidar of Pudiyani forest, stopped them and snatched their sickles. On this all the four ladies namely, Purni Devi Munni Devi, Saraswati Devi and Sita consulted among themselves, and Purni Devi and Saraswati decided to go to the house of Puran Singh to get back their sickles. However, they return empty handed. Up to this stage, prosecution story gets corroboration from P.W. 4 Saraswati Devi. However, thereafter, the prosecution story, as narrated by P.W. 3 Munni Devi appears to be doubtful. P.W. 3 Munni Devi states that Purni Devi was afraid that she may be scolded by her in-laws for coming without sickle, as such she did not go to her house and went towards Village Chatauli, to the house of her elder sister. P.W. 3 Munni Devi states that she also accompanied her. The witness (Munni Devi) further states that on the way they met Anand Singh (accused-appellant), who assured them that he would get their sickles back from Puran Singh. Meanwhile Puran Singh also reached there. He was in a drunken state. P.W. 3 Munni Devi further states that accused Puran Singh and Anand Singh dragged the two ladies to nearby cowshed. The witness further states that after making them drunk, against their will, accused Puran Singh committed rape on Purni devi and accused Anand Singh committed rape on her. This witness has further stated that Purni Devi was also raped by Tham Singh, Harmal Singh and Bachan Singh (all the three accused acquitted by the trial court). P.W. 3 Munni Devi has stated before the trial court that she was subjected to rape by Chuniya Singh also. Lastly, she states that she was threatened by accused Anand Singh not to dare to

disclose the incident to anyone. It is surprising that this witness did not disclose the horror, if she witnesses the same, to anyone. The reason given for not coming to their houses, after sickles were snatched and Puran Singh refused to give the same back also appears to be lame. The witness has stated that Purni Devi was afraid of being scolded by her in-laws in the house for coming without sickle and she preferred to go to her sister's house. If that was so, there is nothing on record, why Munni Devi followed her. Not only this anybody's in-laws would have got more annoyed to her daughter-in-law for remaining out of house for whole of the night, as compared for the reason for coming to house without sickle. Apart from this, if the accused Harmal Singh, Tham Singh Chunya Singh and Bachan Singh, were also involved in the crime, there is no explanation why Munni Devi did not disclose their names to the Magistrate, when her statement was recorded under Section 164 of Cr.P.C. This is a vital and material contradiction in the statement recorded by the Magistrate and the one recorded by the trail court. Such material contradiction cannot be ignored and makes the story, narrated by P.W. 3 Munni Devi, particularly regarding the incident after the sickles were snatched by Puran Singh, doubtful. It is also strange, that why the prosecution did not think it proper to get P.W. 3 Munni Devi medically examined, if she was dragged and also subjected to rape as alleged by her. In our opinion her presence, in the above circumstances, in the cowshed of Anand Singh, appears to be doubtful.

(10) From the medical evidence quoted above, though it appears to be true that deceased Purni Devi died a homicidal death and most probably, she was shown hanged after committing her murder by strangulation. But who committed her murder is not proved by prosecution beyond reasonable doubt. It is also not proved beyond reasonable doubt that Purni Devi and Munni Devi were subjected to rape by accused-appellant Puran Singh or Anand Singh as discussed above. The trial court while convicting accused Puran Singh and Anand Singh has not discussed as to why the statement of Munni Devi was disbelieved against other accused acquitted of the charges framed against them.

(11) Considering the fact that delay of six days in lodging the First Information Report remained unexplained by prosecution and in the statement of P.W. 3 Munni Devi, there are vital and material contradictions, in the statement recorded before the Sub Divisional Magistrate under Section 164 of Cr.P.C., and the statement recorded by the trail court, her testimony cannot be taken to be true beyond reasonable doubt. That being so, it cannot be said that the charge against the accused appellant Puran Singh, who was Chaukidar of the forest and snatched sickles from the women or against the accused Anand Singh, who is also Chaukidar of the forest, is proved beyond reasonable doubt. Therefore, in the opinion of this Court their conviction, recorded by the trial court, cannot be sustained and both the appellants are entitled to benefit of reasonable doubt. Accordingly, this appeal deserves to be allowed.

(12) The appeal is allowed. Conviction and sentence recorded by the trial court against accused/appellants Puran Singh and Anand Singh, in respect of offences punishable under Sections 376, 302/34 and 201 of I.P.C. are set aside. They are acquitted of the charges framed against them. They are on bail. They need not to surrender. The bail bonds are cancelled and sureties are discharged.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 17th May, 2007
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